

COUNTIES: The County Court may lease the poor farm under  
COUNTY COURT: certain circumstances.

November 22, 1949



Honorable Ralph R. Bloodworth  
Prosecuting Attorney  
Butler County  
Poplar Bluff, Missouri

Dear Mr. Bloodworth:

This is in reply to your request for an opinion  
which we re-state as follows:

Butler County owns about seventy acres of land with a large house and barn on it which is being used as a county poor farm. It has about nineteen inmates now. The County Court proposes to lease this seventy acres of land from year to year to one of several applicants for the sum of one dollar. The lessee is to provide food, clothing and care for all inmates admitted to the farm at his own expense and is to stock the farm and furnish the necessary farm implements used thereon and is to carry on said farm at his own expense. Under these conditions is it legal for the County Court to enter into a lease of the county poor farm?

It would seem that the County Court is about to enter into an agreement whereby the support and keeping of the poor is let out by contract under the implied authority contained in Section 9607, R.S. Mo. 1939, which reads as follows:

"Sec. 9607. Not applicable to certain counties.--The four preceding sections shall not apply to any county where the support and keeping of the poor is let out by contract, nor to any county where the superintendent rents or leases the poor farm and stocks the same and furnishes the necessary farm implements used

thereon at his own expense, and carries on said farm at his own expense."

In an opinion under date of September 12, 1945, (Peal) this office rendered an opinion in which Section 9607 was set out and following thereafter is the language:

"Under the provisions of Section 9607, supra, it appears that the county courts may, in their discretion, contract for the support and keeping of the poor with private individuals. \* \* \* ."

In an opinion under date of April 10, 1943, (Douglas) this office considered the question of the authority of a County Court to rent office space in the County Courthouse. In the course of that opinion may be found the following reasoning:

"Your second question is whether or not a county court has the authority to rent office space in the county courthouse to a private individual or to those other than county officers.

"The county courts in the State of Missouri have the power of control and management of county property by virtue of the provisions of Section 2480, R.S. Mo. 1939. This section has the following provisions:

"'The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county.'

"From the above provisions it can readily be seen that the county courts in the various

counties shall have the control and management of all of the property belonging to the county. There seem to be two rules relative to the renting of county property to private individuals, neither of which has been adopted by the statutes or decisions of the State of Missouri. In view of the fact that county boards or county courts have no powers other than those conferred by statute, such boards have no power or authority to rent or lease property of the county unless specifically authorized to do so by the statutes of the State. The other rule has been that the former rule is limited only to county property used or useful for county purposes. See 20 C.J.S., Section 170, page 1002.

"We do not feel that the county court should be given the right to lease property belonging to the county for an indefinite period of time when there is a possibility that such property may in the future be useful or required by the county for some function of the county government. However, we do not feel that this rule should apply in the matter of renting space in the courthouse from month to month, when such space is not needed by the county. If the space is rented from month to month it can be readily recovered by the county, but if it is leased for a period of years it would be difficult, if not impossible, for the county to obtain possession of such office space."

The general rule concerning the powers of County Courts is set out in 20 C.J.S., page 850, as follows:

"It is well settled that a county board possessed and can exercise such powers, and such powers only, as are expressly conferred on it by the constitution or statutes of the state, or such powers as arise by necessary implication from

those expressly granted or such as are requisite to the performance of the duties which are imposed on it by law. It must necessarily possess an authority commensurate with its public trusts and duties."

The rule concerning the power of the County Court to lease county property may be found in 20 C.J.S. at page 1002, which is as follows:

"In accordance with the general rule, stated in Sec. 82, that county boards or county courts have no powers other than those conferred, such courts or boards have no power to rent or to lease property or franchises owned by the county, unless they are expressly or impliedly authorized to do so, as where they are given control of county property; but the application of this rule has been, by one authority, limited to county property used or useful for county purposes, and the public use of a building must not be interfered with by the lease of a part thereof.  
\* \* \* ."

The Court of Appeals of Ohio, Scioto County, considered the question of the leasing of county property in the case of Minamax Gas Co. vs. State, 170 N.E. 33. In its opinion the Court reviewed the authorities as follows, 1.c. 35:

"The claim of the prosecuting attorney in this action is that the lease is wholly void, either because there is no statutory power in the commissioners to lease county property, or because, if there is such power, it proceeds from section 2447, General Code, and that the conditions imposed by that section were not complied with.

"Counties have generally been held to be agencies of the state for the performance of functions of the state, and, while necessarily clothed with some corporate powers, to have only such powers as are conferred by statute. Board of Commissioners v. Gates, 83 Ohio St. 19, 93 N.E. 255. In other jurisdictions

counties have no power to alien property unless express legislative authority exists therefor. See note in Ann. Cas. 1913E, 528. In Ohio, however, there was early recognition of the fact that, while counties have no power to acquire property not needed for county purposes, the county might find itself actually possessed of property for which there was no public need. In such case, said the Supreme Court in Reynolds v. Commissioners of Stark County, 5 Ohio 204, if the property is not held in trust, and not dedicated to public use, it may be aliened, because the right to alien follows necessarily as an incident to ownership. Later the General Assembly enacted what is now section 2447 et seq., General Code, prescribing the method by which county commissioners may sell real estate which is not needed for county purposes.

"It is claimed in this case, that, as a lease is in law a sale of an interest in real estate (Brenner v. Spiegle, 116 Ohio St. 631, 157 N.E. 491), a valid lease may be made by the commissioners only by complying with the terms of the statute referred to, and, as the terms of that statute require competitive bids after due advertisement the lease in question is invalid because it was effected without such competition or advertisement. Other counties have found it convenient and profitable to temporarily lease property for which there was no immediate need, and we hesitate to unequivocally condemn a practice that properly carried out results in even a slight public advantage. Moreover, it appears a forced interpretation to say that the General Assembly, in regulating the sale of county real estate for which the county has no use, intended to inhibit the leasing of property which the county could not sell. This appears to us not only a strained construction, but one not necessary to fully protect the public interests. Until the commissioners find that county real estate is 'not needed for public use' all such property must be deemed or some potential use to the county, So long as it has such potential use, the

interests of the county do not require its sale, nor does section 2447 permit its sale. In the absence of a finding that would enable the commissioners to sell, title must be retained by the county, but, under the doctrine of the Reynolds Case, supra, there is no reason why it should not be temporarily leased, subject to repossession whenever the public needs so require. The commissioners could not however, lease for a definite term and thereby embarrass either themselves or their successors in using the property for public purposes."

If a county provides for the support and keeping of the poor by contract, there may be no present need to which a county poor farm may be put. Following the reasoning set out above, we do not see any objection to the County Court leasing the poor farm in such circumstances when the lease is for a year to year period. However, in all such situations it must be kept in mind that the County Court must fulfill its obligation to see that poor persons are supported.

We have your recent letter enclosing a copy of a lease which has been prepared by the Division of Welfare. This lease has been used in several counties in this State and the form is acceptable to the Federal officials. We have suggested a revision of the provision concerning termination of the lease which would result in more protection to the County Court, should circumstances dictate a return of the farm to county supervision.

#### CONCLUSION

Therefore, it is the opinion of this department that where the support and keeping of the poor is let out by contract, the County Court may enter into a lease of the Kentucky poor farm."

Respectfully submitted,

JOHN R. BATY  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General